

FILED

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

DEC 13 2013

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY WJ DEPUTY

LAVERN BERRYHILL,)
)
Petitioner,)
)
vs.)
)
ANITA TRAMMEL, Warden, et al.,)
)
Respondents.)

No. CIV-13-1083-W

ORDER

On November 19, 2013, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation in this matter, and he recommended that the action be dismissed without prejudice. Petitioner Lavern Berryhill was advised of his right to object, see Doc. 10 at 2, and while Berryhill has not objected to the Report and Recommendation within the allotted time, it appears he has attempted to comply with Magistrate Judge Purcell's directives regarding the deficiencies in his Application for Leave to Proceed in Forma Pauperis, see Doc. 6, and his failure to submit his claims on the form used in cases seeking relief under title 28, section 2254 of the United States Code. See Doc. 12.

Upon de novo review of the record, the Court concurs with Magistrate Judge Purcell's suggested disposition of Berryhill's Petition for Writ of Habeas Corpus ("Petition") to the extent the Court finds that Berryhill has failed to submit a certified statement by an authorized prison official regarding Berryhill's institutional account(s) as required by title 28, section 1915 of the United States Code and Rule 3.3, Rules of the United States District Court for the Western District of Oklahoma.

Berryhill has instead urged the Court to "request a pauperis affidavit from O.S.P. Trust Fund Supervisor . . . [as well as a] Trust Fund Account Statement [since] [the O.S.P. Trust Fund Supervisor is] . . . not responding to [his] . . . requests." Doc. 13. Berryhill, however, has not provided the Court with any evidence that supports his contention that he has attempted to comply with section 1915 and Rule 3.3 or that documents his efforts in obtaining a certified statement.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation [Doc. 10] filed on November 19, 2013;

(2) DISMISSES without prejudice Berryhill's Petition, see Doc. 1, file-stamped October 9, 2013;

(3) further DISMISSES the State of Oklahoma as a respondent in this matter;¹

(4) DENIES Berryhill's Application for Leave to Proceed in Forma Pauperis [Doc. 6] file-stamped November 7, 2013;

(5) DENIES as moot Berryhill's Supplemental Class Action Motion [Doc. 8] file-stamped November 7, 2013;

(6) likewise DENIES Berryhill's request for judicial intervention with regard to his institutional accounts, see Doc. 13; and

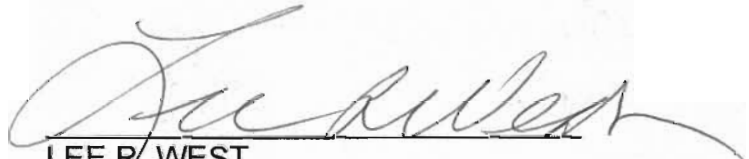
¹Although the State of Oklahoma is identified on page one of the Petition, see Doc. 1, and listed as a respondent in the records of the Clerk of the Court, the state officer having custody of the petitioner is the only proper respondent. See Rule 2, Rules Governing Section 2254 Cases in the United States District Courts.

(7) mindful that filing restrictions should be imposed sparingly, nevertheless FINDS such restrictions are warranted and

(a) ORDERS that all future papers, including letters, affidavits and other correspondence, except those papers necessary to appeal the instant Order, that are submitted by Berryhill in the instant case shall not be filed of record by the Clerk of the Court and shall instead be returned to him; and

(b) DIRECTS the Clerk to return to Berryhill any and all papers, including letters, affidavits and other correspondence, that are hereafter submitted for filing by Berryhill in the instant case that do not pertain to, and are not necessary to, the appeal, if any, of this Order.

ENTERED this 13th day of December, 2013.


LEE R. WEST
UNITED STATES DISTRICT JUDGE